

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. OPTICAL TELEPHONE CORP., Respondent.	DOCKET NO. FCU-03-34
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**ORDER DOCKETING FOR FORMAL PROCEEDING
AND REQUESTING RESPONSE**

(Issued January 20, 2004)

On May 5, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-075, involving Optical Telephone Corp. (Optical), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On April 8, 2003, Ms. Suzanne Flynn filed a complaint with the Board against Optical alleging that her presubscribed long distance service at her residence had been changed from AT&T to Global Crossing. Optical is a reseller of Global Crossing service. Board staff identified the matter as C-03-75 and, pursuant to Board rules, on April 11, 2003, forwarded the complaint to Optical for response within ten days. Optical did not respond within the ten-day time limit.

On April 24, 2003, Board staff issued a proposed resolution describing these events and finding by default that Optical had violated the Board's cramming rules. The proposed resolution directed Optical to fully credit all charges on Ms. Flynn's account and to close Ms. Flynn's account. No party other than the Consumer Advocate has challenged the staff's proposed resolution.

In its May 5, 2003, petition, Consumer Advocate asserts that a civil penalty should be imposed against Optical to deter future cramming violations.

The Board has reviewed the record to date and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until February 18, 2003, and allow Optical an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on May 5, 2003, identified as Docket No. FCU-03-34, is granted and docketed for formal proceeding.
2. Optical Telephone Corporation is requested to file a response to the petition filed by Consumer Advocate on May 5, 2003, on or before February 18, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.